

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 89 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KANAIYALAL PREMJBHAI KHINCHI

Appearance:

1. Criminal Revision Application No. 89 of 2001
MR PR ABICHANDANI, APP, for Petitioner No. 1-2
MR HR PRAJAPATI for Respondents.
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/09/2002

ORAL JUDGEMENT

1. State of Gujarat has preferred this Revision Application on being aggrieved by a judgment and order passed by learned Special Judge, Bharuch, in Criminal Misc. Application No.756 of 2000, which was passed in

connection with handing over of muddamal truck No.GJ-5-U-3447 to its registered owner.

2. The facts of the case, in brief, are that a complaint came to be lodged in respect of the said vehicle and other five vehicles alleging that widespread malpractices were adopted in transport of naphtha, which is an essential commodity. The general allegation is that naphtha was replaced by water while it was being transported from Hazira to I.P.C.L., Dahej, in Bharuch district. The said tanker was seized on April 12, 2000. An application was preferred by the owner for interim custody of the vehicle, which was opposed to by the State. After considering various contentions raised by the State, the Special Court allowed the application and ordered handing over of the vehicle upon certain conditions. Aggrieved thereby, the State has preferred this revision application.

3. Learned Additional Public Prosecutor, Mr. Abichandani, submitted that the vehicle was used in commission of a serious offence. That the jurisdiction of the Court is ousted by Section 6-E of the Essential Commodities Act and, therefore, the order ought not to have been passed.

4. Learned Advocate, Mr. Prajapati, appearing for the respondents submitted that Section 6-E will have no application, as no proceedings are pending. He also submitted that, excepting lodging of F.I.R., no further proceedings have taken place. In cases where there are specific allegations, the muddamal has been ordered to be returned to the owner and, therefore, no illegality is committed. The Special Court has imposed certain conditions and, therefore, interest of the State is protected in event some proceedings are initiated and, in absence of any miscarriage of justice indicated by the revisioner, this Court may not interfere with the order.

5. Having regard to rival side contentions, at the outset, it is required to be noted that, as observed by the learned Special Judge, it has been clearly declared by the Collector, Bharuch, before the Special Court that no proceedings are initiated under Section 6 qua tanker No.GJ-5-U-3447, i.e. the present vehicle in question. The District Supply Officer, Surat, had also declared that no proceedings were initiated by them for confiscation of the said vehicle. Section 6.E of the Essential Commodities Act speaks of pendency of the confiscation under Section 6.A and, in these facts, no proceedings can be said to be pending and, therefore,

mere lodging of F.I.R. by itself cannot be construed as initiation of proceedings or pendency of proceedings.

6. Learned Special Judge has taken into consideration all relevant aspects and has passed the order in question by imposing certain conditions. No reasons are shown which would indicate miscarriage of justice. This Court, therefore, is not inclined to interfere with the order impugned herein in exercise of revisional jurisdiction. The revision application, therefore, must fail and the same is dismissed. Rule is discharged.

[A.L. DAVE, J.]

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